Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 334 Of 2006
(Old Defective FAFO No. 39 of 1998)

Smt. Hema Joshi, Wife f Sri Mohan Chandra Joshi, R/O S.R. Hostel, D.S.B. College Compound Tallital, District Nainital.

…..Claimant/Appellant.

Versus

Uttar Pradesh State Road Transport Corporaion through Regional Manager, U.P.State Road Transport Corporation Tanakpur, Tehsil Khatima District Nainital.

…..Respondent.

Sri Sharad Sharma, learned counsel for the appellant.
Sri Amar Nath Sharma, learned counsel for the respondent.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date December 21, 2006.

(Per Hon'ble B.S. Verma J.)

This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act*)** against the judgment and award dated 22.10.1997, passed by the Motor Accident Claims Tribunal/III Additional District Judge, Nainital **(*for short the Tribunal*)** in Motor Accident Claims Petition No. 317 of 1992 and 318 of 1992, Smt. Hema Joshi Vs. U.P.State Road Transport Corporation, whereby compensation of Rs. 78,000/- along with interest @ 12% per annum from the date of claim petition till payment has been awarded in favour of the claimant. Aggrieved, the claimant has come up in appeal for enhancement of compensation.

Brief facts of the case are that the claimant Hema Joshi aged 32 years and a house wife having income from knitting and tailoring filed claim petition under Section 166 of the Act before the Tribunal with the allegation that the on 20-11-1991, she was going from Nainital to Khatima and boarded Bus No. URN-9861. The bus was being driven rashly and negligently by its driver. When the bus reached near Nanak Sagar barrier, it over-turned due to the negligence on the part of the driver, with the result the claimant and

many other passengers suffered injuries and the right hand of the claimant got fractured besides other injuries on her person. As a result of the injuries suffered by the claimant, her right hand had been impaired permanently and it has become useless. It was also alleged that the claimant had been earning Rs. 1500-1600 per month from knitting and tailoring work, but due to disability of her right hand, she has been deprived of her earning. The claimant has claimed compensation of Rs. 6,99,000/-. By claim petition no. 318 of 1992, interim compensation of Rs. 12,000/- has been claimed on the principle of no fault.

The opposite party-respondent has contested the claim petition and filed its written statement. The allegations made in the claim petition have been denied. It was asserted that the petition is liable to be dismissed for non-joinder of State of U.P.; that there was no fault on the part of the driver of the bus. It was also asserted that at the place of accident, an old person suddenly came across the road and in order to save him, the driver applied the brakes and that none of the passengers suffered any injury in the process. The driver was driving the vehicle carefully and cautiously.

On the pleadings of the parties, the learned Tribunal framed following issues:-

1. Whether on 20-11-1991 at about 5.30 p.m. on Sittarganj-Khatima road, at Nanak Sagar Barrier, Smt. Hema Joshi, a passenger of bus no. URN 9861 belonging to UPSRTC sustained grievous injuries due to over-turning of the said bus?

2. Whether the aforesaid accident resulting in grievous injuries to its passenger, Smt. Hema Joshi, took place due to rash and negligent driving of bus no. URN 9861 by its driver?

3. Whether the claimant has become permanently disabled due to the grievous injuries sustained on her right hand in the aforesaid accident?

4. What amount has been spent by the claimant due to the injures sustained by her in the aforesaid accident?

5. To what amount of compensation and relief, if any, is the claimant entitled to get against the respondent?

The claimant-appellant led oral as well as documentary evidence before the learned Tribunal. In oral evidence, she has examined herself as P.W.1, Joga Singh as P.W.2, Bhawani Datt Joshi, as P.W.3, Ajay Bisht as P.W.4, Ratan Singh Adhikari as P.W.5 and Dr. R.H. Gokhale as P.W.6 beside Mohan Chandra Joshi as P.W.7. The documentary evidence led by the claimant-appellant shall be referred to in the latter part of the judgment as and when necessary. On the other hand, the O.P.-respondent examined D.W.1 Kishan Ram, the driver of the bus in question.

The learned Tribunal heard learned counsel for both the parties and after perusing the evidence on record took up Issue Nos. 1 and 2 for decision together. The learned Tribunal has held that the claimant suffered injuries the due to rash and negligent driving by the driver of the bus and she is entitled to get compensation for the injuries suffered by her. The learned Tribunal took up Issue No. 3 and 4 together for decision. The learned Tribunal awarded a sum of Rs. 20,000/- towards medical expenses of the injured claimant. As regards loss of income, the learned Tribunal assessed that the loss of monthly income of the injured claimant to be Rs. 300/- and rounded it Rs. 4,000/-per annum and taking the age of the injured to be 32 years, the Tribunal has applied multiplier of 12 thereby assessed the loss of income to be Rs. 48,000/- thousand. The Tribunal also awarded a sum of Rs. 10,000/- towards physical and mental agony and ultimately compensation of Rs. 78000/- along with interest @ 12% per annum has been awarded by the impugned judgment and award, as mentioned earlier.

The impugned award has been assailed on the ground that the learned Tribunal has erred in calculating the monthly loss @

Rs. 4000/- per annum when it was found that the right hand claimant has been incapacitated permanently due to the injuries suffered by her. It has also been contended that the loss of income of the injured from knitting work was not considered by the learned Tribunal and that the multiplier of 12 was wrongly applied taking into consideration the life span of the injured.

We have heard learned counsel for both the parties and perused the entire material on record.

At the very out set, it may be noted that the respondent U.P.S.R.T.C. has not preferred any appeal against the impugned award and even cross-objections were not filed in the present appeal. In this view of the matter, the findings learned Tribunal in so far as it related to Issue Nos. 1 and 2 on the point of rash and negligent driving by the driver of the bus resulting into grievous injuries to the claimant-appeal. The only controversy to be determined in the present appeal is whether the compensation awarded by the Tribunal in favour of the appellant is inadequate and not based on the evidence on record. It may also be added that the appellant has not challenged the finding of the learned Tribunal on other counts except regarding loss of income, whereby the Tribunal has worked out loss of income to be Rs. 48,000/-, therefore, the award of Rs. 20,000/- towards medical expenses and Rs. 10,000/- towards mental and physical sufferings is maintained and upheld.

The claimant has claimed compensation of Rs. 6,99,000/- in the claim petition, but in her statement as P.W.1 she has not given details regarding the said amount of compensation. She has stated that she had spent Rs. 50-60 thousand in her treatment. She has also stated that due to disablement of her right hand, she has lost every prospect of her earnings from knitting and tailoring, which she used to earn prior to the accident.

In her statement before the Tribunal she has stated that she used to earn Rs. 500-600 per month. She however added that she used to earned Rs. 1500-1600 per month. For proper assessment of compensation on the point of loss of income, a reference to the testimony of P.W.6 Dr. R.H. Gokhale, Bone Specialist of District Hospital Pilibhit, who was a member of the Medical Board, is necessary. This witness had issued disability certificate paper no. 12-C/8, which purports to have been signed by other members of the Medical Board. P.W.6 in his testimony has stated that the permanent disability certificate is in his handwriting. The disability certificate on record is dated 28.1.1993 paper no. 12-C/8 on record. In reply to the query made by the Court, this witness has stated at page no. 3 of his statement that the Disability of the injured is about 40%. In his cross-examination, the doctor has clearly denied the suggestion that Hema Joshi is in a fit condition to do her work properly. He also denied the suggestion that without thorough examination, the condition of hand cannot be determined. The disability certificate paper no. 12-C on record stands proved by the testimony of the witness P.W.1 Smt. Hema Joshi and P.W.6 Dr. R.H.Gokhale. The submission of the learned counsel is that since it is established in the case that the right hand of the injured has lost its utility substantially, therefore, in view of the Apex Court verdict in the case of ***Pratap Narain Singh Deo Vs. Srinivas Sabata and another [(1976) 1 Supreme Court Cases, 289],*** wherein it has been held that if the injury was of such a nature as to cause permanent disablement and it incapacitated the injured from performing all work which he was capable of performing. In the case before the Apex Court, the workman was a carpenter. Due to accidental injuries, his left arm was amputated, therefore, the Apex Court defined total disablement. In the instant case, taking into consideration the nature of injuries, the period of treatment and the clinical tests, X-ray examinations and operation etc. undergone by the claimant-injured coupled with the statement of the doctor P.W.6 that 80% motion of the right hand of the injured has ceased, it can safely be inferred that the appellant had lost future prospect of her earning from the work of knitting and

tailoring upto 80%. It may be added that in the claim petition she has mentioned that she was doing the work of knitting and tailoring. This averment is substantiated from her on oath statement in the last paragraph f page no. 7 wherein P.W.1 Hema Joshi had stated that she used to do tailoring of shirt, trousers and school dress for the schooling children and used to do knitting work. This part of her statement has remained unchallenged in the cross-examination. As mentioned above, PW 6 Dr. R.H.Gokhale has clearly stated that motion of right hand has ceased upto 80%, therefore, so far as loss of earning is concerned, the disability can be taken to be permanent to the extent of 80% especially because the claimant now cannot do any substantial work from her right hand. No evidence to the contrary has been led from the side of the respondent to show that she can still continue to do her knitting work, etc. Therefore, following the ratio of the case of *Pratap Narain Singh Deo (supra)*, the disability shall be taken to be 80%.

The award under appeal was made by the learned Tribunal on 22-10-1997. For assessing the loss of income, we take the aid of the Second Schedule appended to Section 163-A of the Motor Vehicles Act. The income of the injured-appellant is not fully established on record more than 600/- per month, therefore, in the interest of justice we take only the notional income of Rs. 15000/- per annum in the case of the injured appellant for a just decision of the appeal. Out of this amount, 1/3rd shall be deducted towards personal expenses, therefore, the amount of Rs. 10,000/- per annum may by taken as relevant factor in the present case. It is not disputed that her age was 32 years at the time of accident, therefore, the injured fell in the age group of 30-35 years. The Apex Court in the case of ***Managing Director TNSTC Ltd. Vs. K.I.Bindu and others [(2005) 8, Supreme Court Cases, Page 473]*** has held that the Second Schedule of Section 163-A of the Motor Vehicles Act, 1988 is to serve as a guide, but the same cannot be said to be an invariable ready recknor. In that case the victim being 34 years of age, the Apex Court held that multiplier of 13 was proper and not of 17. In

the instant case, in view of the Apex Court verdict, the multiplier of 13 will be appropriate. The loss of income in case of 100% disability will be 10,000/- x 13 = 1,30,000/-. PW 6 has stated that the motion of right hand has ceased to the extent of 80%. As such 80% of this amount comes to 1,30,000/- x 8/10 = Rs. 1,04,000/-. This amount will be just and proper compensation for loss of income of the claimant-appellant. The learned Tribunal has already awarded amounts of Rs. 20,000/- towards medical expenses and Rs. 10,000/- towards physical and mental agony. Thus the total amount of compensation comes to Rs. 1,34,000/- instead of Rs. 78,000/-.

We have already noticed above that the respondent has not preferred any cross-objection against the findings recorded by the learned Tribunal, therefore, rest of the finding of the learned Tribunal including payment of interest @ 12% per annum from the date of filing of the claim petition on the amount of compensation till the date of payment is maintained.

In the result, the appeal deserves to be partly allowed. The impugned award stands modified to the extent that the claimant-appellant shall be entitled to get compensation of Rs. 1,34,000/- (one lac thirty-four thousand) instead of Rs. 78,000/-.

The appeal is partly allowed. The impugned judgment and award dated 22-10-1997 is modified to the extent that claimant-appellant shall get compensation of ***Rs. 1,34,000/-*** instead of Rs. 78,000/- as awarded by the learned Tribunal. Rest of the finding of the learned Tribunal regarding grant of interest @ 12% per annum from the date of claim petition, i.e. from 18.5.1992 till the date of payment is maintained. Costs easy.

(B.S.Verma, J.) **(P.C.Verma, J.)**

RCP